

ESTTA Tracking number: **ESTTA352378**

Filing date: **06/11/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Metacyte Business Lab LLC
Granted to Date of previous extension	06/12/2010
Address	201 East Jefferson Street, Suite 125 Louisville, KY 40202 UNITED STATES
Attorney information	Jack A. Wheat STITES & HARBISON, PLLC 400 West Market Street, Suite 1800 Louisville, KY 40202 UNITED STATES jwheat@stites.com Phone:(502) 587-3400

Applicant Information

Application No	77423742	Publication date	04/13/2010
Opposition Filing Date	06/11/2010	Opposition Period Ends	06/12/2010
International Registration No.	NONE	International Registration Date	NONE
Applicant	Medicyte GmbH Im Neuenheimer Feld 581 69120 Heidelberg, GERMANY		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Proteins, nucleic acids, genes, and cells for medical research purposes
Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and veterinary products for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; drugs for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy in humans; protein supplements; proteins, nucleic acids, genes, and cells for medical diagnostics and treatment; medical, biological, chemical, biotechnological, and gene-technological products and preparations for medical use for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; diagnostic preparations for medical and veterinary use
Class 010. All goods and services in the class are opposed, namely: Diagnostic devices for medical and veterinary use, namely, for diagnosing cardiovascular disease, stroke, cancer, tumors, diseases of

the pancreas, kidney and liver and neurodegenerative diseases
<p>Class 035.</p> <p>All goods and services in the class are opposed, namely: Administrative processing of purchase orders in the field of chemistry, biotechnology, diagnostics, and gene-therapy; administrative processing of purchase orders in the field of pharmaceuticals and medicines, medicines for humans, veterinary medicines, and gene-therapy; business consultation services in the field of medicine</p>
<p>Class 042.</p> <p>All goods and services in the class are opposed, namely: Scientific services for pharmaceutical biotechnological, diagnostic, analytical, medical, or gene-technological laboratories, industrial facilities, research and development facilities in the field of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; scientific consulting services in the field of chemistry, biotechnology, diagnostics, and gene-technology, namely, consulting services provided via the Internet; mission-oriented research in the field of chemistry, pharmacy, biotechnology, diagnostics, gene-technology, and medicine; services of a chemical laboratory; conducting of chemical examinations; services of a medical laboratory; medical laboratory services in the nature of conducting medical and clinical trials</p>
<p>Class 044.</p> <p>All goods and services in the class are opposed, namely: Medical consultation; consulting services in the field of medicine, namely, human medicine, veterinary medicine, pharmacy, and gene-therapy in the nature of cell therapy; medical consultation services provided via the Internet; medical care; medical information services, namely, laboratory services that report results directly to the patient</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	METACYTE		
Goods/Services	<p>research, development and commercialization of assorted life sciences technologies including, but not necessarily limited to uses of proteins, nucleic acids, genes, and cells for medical applications, pharmaceuticals, drugs, prodrugs, biologics, natural products, cell-based therapies, and systems for use in the treatment of various conditions, including, cardiovascular conditions, cancer, degenerative diseases, including, retinal, spinal cord injuries, Parkinson's disease, amyotrophic lateral sclerosis (ALS), multiple sclerosis, and bone diseases and disorders, as well as for use in fields such as pain management, oral health, and organ transplantation; diagnostics and predictive tests making use of proteins, nucleic acids, genes, exosomes, and cells; and further, in association with medical imaging and processing services for various industries with applications relevant to pharmaceutical, biotechnological, diagnostic, analytical, medical, or gene-technological laboratories, industrial facilities, research and development facilities in fields such as cardiovascular disease, stroke, and cancer as well as use of the mark in association with software and web-based systems for data storage and processing applicable to administrative processing of purchase orders in various fields, including the life sciences, in the fields of chemistry, biotechnology, diagnostics, gene-therapy, pharmaceuticals and medicines, medicines for humans, and veterinary medicines; as well as consulting services to companies in the life sciences, including in the fields of chemistry, pharmacy, biotechnology, diagnostics, and gene-technology.</p>		

Attachments	LOUISVILLE-#788145-v1-Medicyte_Notice_of_Opposition.tif (5 pages)(163772 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jackawheat/
Name	Jack A. Wheat
Date	06/11/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/423,742
Filed: March 17, 2008
Mark: MEDICYTE
Published in the *Official Gazette* on April 13, 2010.

METACYTE BUSINESS LAB LLC,)	
)	
Opposer,)	
)	OPPOSITION NO.
v.)	
)	
MEDICYTE GMBH,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Comes the Opposer, METACYTE BUSINESS LAB LLC, (hereinafter “MetaCyte” or “Opposer”), and for its Opposition to the pending application of MEDICYTE GMBH (hereinafter “Medicyte” or “Applicant”), Opposer submits the following:

1. Opposer, MetaCyte Business Lab LLC, is a Kentucky limited liability company, with its principal place of business at 201 East Jefferson Street, Suite 125 Louisville, Kentucky 40202.
2. Continuously since well prior to September 17, 2007, MetaCyte has used the mark METACYTE in commerce in association with the research, development and commercialization of assorted life sciences technologies including, but not necessarily limited to uses of proteins, nucleic acids, genes, and cells for medical applications, pharmaceuticals, drugs,

prodrugs, biologics, natural products, cell-based therapies, and systems for use in the treatment of various conditions, including, cardiovascular conditions, cancer, degenerative diseases, including, retinal, spinal cord injuries, Parkinson's disease, amyotrophic lateral sclerosis (ALS), multiple sclerosis, and bone diseases and disorders, as well as for use in fields such as pain management, oral health, and organ transplantation; diagnostics and predictive tests making use of proteins, nucleic acids, genes, exosomes, and cells; and further, in association with medical imaging and processing services for various industries with applications relevant to pharmaceutical, biotechnological, diagnostic, analytical, medical, or gene-technological laboratories, industrial facilities, research and development facilities in fields such as cardiovascular disease, stroke, and cancer as well as use of the mark in association with software and web-based systems for data storage and processing applicable to administrative processing of purchase orders in various fields, including the life sciences, in the fields of chemistry, biotechnology, diagnostics, gene-therapy, pharmaceuticals and medicines, medicines for humans, and veterinary medicines; as well as consulting services to companies in the life sciences, including in the fields of chemistry, pharmacy, biotechnology, diagnostics, and gene-technology.

3. On March 17, 2008, the Applicant, filed an intent-to-use application, Serial Number 77/423,742, seeking registration of the word mark MEDICYTE in connection with "proteins, nucleic acids, genes, and cells for medical research purposes" in International class 001, "pharmaceutical and veterinary products for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; drugs for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy in humans; protein supplements; proteins, nucleic acids, genes, and cells for medical diagnostics

and treatment; medical, biological, chemical, biotechnological, and gene-technological products and preparations for medical use for the treatment of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; diagnostic preparations for medical and veterinary use” in international class 005, “diagnostic devices for medical and veterinary use, namely, for diagnosing cardiovascular disease, stroke, cancer, tumors, diseases of the pancreas, kidney and liver and neurodegenerative diseases” in International Class 010, “administrative processing of purchase orders in the field of chemistry, biotechnology, diagnostics, and gene-therapy; administrative processing of purchase orders in the field of pharmaceuticals and medicines, medicines for humans, veterinary medicines, and gene-therapy; business consultation services in the field of medicine” in International Class 035, “scientific services for pharmaceutical biotechnological, diagnostic, analytical, medical, or gene-technological laboratories, industrial facilities, research and development facilities in the field of cardiovascular disease, stroke, cancer, tumor, namely, by the way of cell and gene therapy; scientific consulting services in the field of chemistry, biotechnology, diagnostics, and gene-technology, namely, consulting services provided via the Internet; mission-oriented research in the field of chemistry, pharmacy, biotechnology, diagnostics, gene-technology, and medicine; services of a chemical laboratory; conducting of chemical examinations; services of a medical laboratory; medical laboratory services in the nature of conducting medical and clinical trials” in International Class 042 and “medical consultation; consulting services in the field of medicine, namely human medicine, veterinary medicine, pharmacy, and gene-therapy in the nature of cell therapy; medical consultation services provided via the Internet; medical care; medical information services, namely, laboratory services that report results directly to the patient” in

International Class 044. That application was published in the *Official Gazette* on April 13, 2010.

4. Opposer's continued use of its mark METACYTE predates the priority date claimed by Applicant in the opposed application, thus, Opposer has priority of use.

5. The mark sought to be registered, if used with Applicant's goods and services, is so similar to Opposer's mark as used as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)), all to Opposer's irreparable damage.

6. Accordingly, Opposer believes that it will be damaged by registration of the mark sought to be registered in that, if registration issues, (a) consumers are likely to purchase Applicant's goods or services believing them to be the Opposer's services, or to be sponsored by or associated with Opposer; (b) any defects in Applicant's services may be attributed to the Opposer; and (c) registration of mark will give Applicant the presumptive right to use the mark with its services. All of these effects of registration will cause injury to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77/423,742 be refused and that the registration sought therein be denied in all International Classes for which registration is sought, namely, International Classes 001, 005, 010, 035, 042, and 044.

/jackawheat/
Jack A. Wheat
Lindsay Yeakel Capps
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202
Telephone: (502) 587-3400

Attorneys for Opposer

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Counsel for the Applicant by mailing said copy on this 11th day of June, 2010, via First Class Mail, postage prepaid to:

Stanley C. Macel, III
CONNOLLY BOVE LODGE & HUTZ LLP
PO Box 2207
Wilmington, DE 19899-2207

/jackawheat/
Jack A. Wheat,
One of Attorneys for Opposer